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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,892	08/27/2003	Gabriel Browne		5097
7590	06/09/2004		EXAMINER	
GDB			ALIMENTI, SUSAN C	
Attn: Gabriel Browne P.O. Box 30583 Indianapolis, IN 46230			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/648,892	BROWNE, GABRIEL
	Examiner	Art Unit
	Susan C. Alimenti	3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on 24 May 2004.
- 2a)  This action is FINAL. 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4)  Claim(s) 9-28 is/are pending in the application.
  - 4a) Of the above claim(s) 12-15, 19 and 23-26 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 9-11, 16-18, 20-22, 27 and 28 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 27 August 2003 is/are: a)  accepted or b)  objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some \* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/30/04.
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 12-15, and 23-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species 2, there being no allowable generic or linking claim. Election was made **without** traverse in communications filed 24 May 2004.
2. While the applicant has not indicated that claim 19 is withdrawn from consideration, the Examiner points out that it is directed to Figure 3c, a retractable leash assembly, and therefore not part of the elected Species 1, as viewed in Figures 1-3b. Therefore claim 19 is also withdrawn from consideration.

### ***Drawings***

3. New corrected drawings are required in this application *should allowable subject matter be determined* because the drawings present in the case are informal and unacceptable for publication. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 9, the phrase "immediately adjacent the to each of the..." is awkward and confusing.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Morgan (GB 2 265 659 A).

Morgan discloses a pet-securing device configured to couple to one of a horizontal or vertical surface comprising a frame 1 including a plurality of apertures 1,2,3,4 configured to receive a first pair or plurality of fasteners, such as screws, to mount the frame to said horizontal or vertical surface (Morgan, p.4, ln.1). Morgan's device further comprises a bar 7 extending from frame 1 and configured to receive a leash, having two opposing ends 7a, 7b and a middle section 7c (See Examiner's reference characters Figure 2A) each couple to the frame at a position considered to be immediately adjacent each of the first fasteners, as best understood.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 9-11, 17, 18 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan as applied to claim 22 above and further in view of Carton et al. (FR 2519233 A1).

Morgan discloses the claimed invention except the frame 1 is not generally shaped like an animal or dog. Morgan does however teach that frame or board 1 can advantageously be used to display advertisements, such a use would encourage changing the shape of the frame in order to promote a certain marketing scheme. Further, Carton et al. (Carton hereinafter) discloses a wall mountable animal tethering device that is in fact in the shape of a dog for aesthetic reasons. The shape of Carton's device also indicates to pet owners the function of the tethering device, thus welcoming them to utilize said device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to change the shape of Morgan's device for the aforementioned reasons, or possibly others, since there is no invention in merely changing the shape or form of an article without changing its function except in a design patent. *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

10. Claims 16, 20-21, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan in view of Turcke as applied to claims 9-11, 17, 18 and 27 above, and further in view of Lamb (US 5,082,123).

Morgan, as modified, discloses the claimed invention except the ends 7a, 7b of the U-shaped bar 7 do not direction contact the fasteners. Morgan's fasteners 8 and 9 instead contact plate 6 and frame holes 10, 11 in order to fasten bar 7 to said frame. Morgan does teach that the tethering bar "may be of any shape which would enable a person to thread an animal leash over [it]" (Morgan, p.2, lns.17-21). It is well known that there are endless systems for mounting u-shaped bars to vertical or horizontal planes. Lamb discloses one of such mounting systems comprising a u-shaped bar 10 configured to be coupled to a vertical or horizontal surface (Lamb, Figures 1-5). At opposite ends of said bar 10 are fasters directly contacting said bar and coupling said bar to a wall 38, thus eliminating the need for the plate 6 in Morgan's device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Morgan's device by using a Lamb's bar in order to simplify the structure and therefore simplifying manufacture of said device.

### *Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA

*Charles T. Jordan*  
CHARLES T. JORDAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

It appears that the applicant in this application is a *pro se* applicant (an inventor filing the application alone without the benefit of a Patent Attorney or Agent). Applicant may not be aware of the preferred methods of ensuring timely filing of responses to communications from the Office and may wish to consider using the Certificate of Mailing or the Certificate of Transmission procedures outlined below.

#### **CERTIFICATE OF MAILING**

To ensure that the Applicant's mailed response is considered timely filed, it is advisable to include a "certificate of mailing" on at least one page (preferably on the first page) of the response. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: "Commissioner of Patents and Trademarks, Washington, D.C. 20231" on (date).

(Typed or printed name of the person signing this certificate)

(signature)

#### **CERTIFICATE OF TRANSMISSION**

Alternatively, if applicant wishes to respond by facsimile rather than by mail, another method to ensure that the Applicant's response is considered timely filed, is to include a "certificate of transmission" on at least one page (preferably on the first page) of the response. This method should be used by foreign applicants without access to the U.S. Postal Service. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703) \_\_\_\_ - \_\_\_\_ on (date).

(Typed or printed name of the person signing this certificate)

(signature)

These "Certificates" may appear anywhere on the page, and may be handwritten or typed. They must be signed, and the date must be the actual date on which it is mailed or transmitted. For the purpose of calculating extensions of time, the date shown on the certificate will be construed as the date on which the paper was received by the Office, regardless of the date the U.S. Postal Service actually delivers the response, or the fax is "date-stamped" in. In this way, postal or transmission delays do not affect the extension-of-time fee.

In the event that a communication is not received by the Office, applicant's submission of a copy of the previously mailed or transmitted correspondence showing the **originally** signed Certificate of Mailing or Transmission statement thereon, along with a statement from the person signing the statement which attests to the timely mailing or transmitting of the correspondence, would be sufficient evidence to entitle the applicant to the mailing or transmission date of the correspondence as listed on the Certificate of Mailing or Transmission, respectively.

**NOTICE TO APPLICANT:** In the case of lost or late responses the use of other "receipt producing" forms of mailing a correspondence to the Patent Office, such as Certified Mail, or a private shipper such as FedEx, **WILL NOT** result in the applicant getting the benefit of the mailing date on such receipts. These receipts are not considered to be acceptable evidence since there is nothing to "tie-in" the receipt with the particular document allegedly submitted.